

BOROUGH OF HARRINGTON PARK
Bergen County, New Jersey
ORDINANCE #729

“AN ORDINANCE AMENDING CHAPTER 350: ZONING BY ADDING ARTICLE XVII

ENTITLED “UNLAWFUL RESIDENTIAL UNITS”

WHEREAS, The Mayor and Council hereby determines that the use and occupancy of illegal residential apartments, as set forth above, are detrimental to the general health, safety and welfare of the Borough, and that such illegal occupancies generate the utilization of Borough services, including fire, police, sanitation, public works and general administration, and further generate the use of motor vehicles which take parking spaces and create traffic, while escaping real estate taxation. The Borough finds this to be an unfair and inequitable situation; and

WHEREAS, the Mayor and Council of the Borough of Harrington Park finds it to be in the best interest of the Borough and its citizens to adopt an ordinance to prohibit such units and related provisions.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Harrington Park, County of Bergen, State of New Jersey, as follows:

Section 1: Chapter 350 entitled Zoning of the Borough of Harrington Park hereby amended and revised to add and create a new Article XVII entitled, “Unlawful Residential Units” and new sub article sections beginning at §350-45 to read as follows:

ARTICLE XI: UNLAWFUL RESIDENTIAL UNITS

§ 350-95. Definitions.

For the purpose of this ordinance an “illegal Dwelling Unit” is defined as follows:

1. Dwelling unit shall mean (1) or more rooms occupied or intended for occupancy as a separate living quarters by one or family, not common to the main residence and/or has only access from directly outside and/or has locked doors separating units. Dwelling unit is a separate area providing cooking, sleeping and sanitary facilities.
2. An additional dwelling unit, within a single family, for which on certificate of occupancy has not been issued after Harrington Park Zoning Code was adopted.
3. Any additional dwelling units that legal documented cannot be shown built as “pre- existing non-conforming” or a Board “Use Variance” per Harrington Park Zoning Ordinance.
4. A dwelling unit which is created without the necessary N.J Uniform Construction Code permits.
5. Landlord shall be deemed to be owner in fee, irrespective of residency within building or any entity that owns or possess property due foreclosure.
6. Any other dwelling or rental unit which is in violation of any State, County or Municipal statute, regulation and/or ordinance.

§ 350-96. Rental or payment for use prohibited.

A. No person shall charge, demand, receive or accept any rent or other payment for the use or occupancy of any residential premises within the Borough of Harrington Park which is used or occupied in violation of the Zoning Ordinance of the Borough of Harrington Park. Each such charge, demand, receipt or acceptance of such rent or other payment in violation hereof shall constitute a separate offense.

B. No person, specifically including but not limited to those persons commonly known as "real estate agents," "brokers" or "salespersons," shall assist, aid or facilitate in the rental, sale, use or occupancy of any residential premises within the Borough of Harrington Park which is used or occupied or intended to be used or occupied in violation of the Zoning Ordinance of the Borough of Harrington Park. For purposes of this article, the acts of listing for rental or sale, advertising or otherwise offering for rent, lease or sale any residential premises within the Borough of Harrington Park which are used or occupied or intended to be used or occupied in violation of the Zoning Ordinance of the Borough of Harrington Park shall be deemed to constitute a violation of this article. Any person who is to receive a commission, profit or other form of remuneration or emolument as a result of a rental, lease or sale of residential premises shall have a duty to make reasonable inquiry to determine whether or not the use or occupancy or intended use or occupancy is or will be in violation of the Zoning Ordinance of the Borough of Harrington Park.

§350-97. Notification of occupants.

A. The Zoning Official or designee shall issue a court summons, in violation of this ordinance, to the owner of record and an order to vacate shall be posted. Within 10 days following receipt of this notice to abate an unlawful occupancy in violation of the Zoning Ordinance of the Borough of Harrington Park or within 10 days following receipt of a summons for violation of this article or the Zoning Ordinance of the Borough of Harrington Park or prior to the institution of dispossession proceedings to correct an illegal occupancy, whichever first occurs, the owner of residential premises within the Borough of Northvale shall serve upon all of the unlawful occupants using or occupying said residential premises a copy of this article and shall post a copy of this article in a common area of the premises accessible to all the occupants thereof for inspection.

B. Upon written notification or violation by the Zoning Official that the apartment is illegal the Landlord shall place all prospective and future rent in an interest-bearing escrow account until finalization of the municipal action. The Landlord shall have an affirmative obligation to produce proof of this account to the Municipal Court Judge at summoned hearing.

C. In addition, other action or violations may be issued to the Landlord, as required, by the appropriate Borough Officials in regard to the Health, Safety and Welfare of the occupants.

§ 350-98. Violations and penalties.

A. Any person violating and convicted of any provision of this article shall be subject to a fine of not less than \$1,000 or more than \$2,000 or by imprisonment for a term not exceeding 90 days, or both, for each separate violation of same.

B. In addition to requiring reimbursement from the owner-landlord of the structure for relocation assistance paid to a displaced tenant, and notwithstanding the provisions of Subsection A of this section, the Municipal Court may impose an additional fine for zoning or housing code violation for an illegal occupancy up to an amount equal to 6 times the monthly rental paid by the displaced person to be paid to the municipality by the owner-landlord of the structure pursuant to the provisions of N.J.S.A. 2A:18-61.1g(c). Notwithstanding the penalties provided above, a second or subsequent violation for an illegal occupancy as provided in this subsection by any owner-landlord for a second or subsequent violation, the Municipal Court may impose a fine equal to the annual tuition costs of any resident of the illegally occupied unit attending a public school, which fine shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to Penalty Enforcement Law of 1999, (N.J.S.A. 2A:58-10 et seq.). The Municipal Court and the Superior Court shall have jurisdiction of the proceedings for the enforcement of the penalty provided by this section. The tuition costs shall be determined in the manner prescribed for nonresident pupils pursuant to N.J.S.A. 18A:38-19, and the payment of the fines shall be remitted to the appropriate school district.

C. In those instances where a violation of this section is based on the maintenance of residential dwelling units above the number of units permitted by the Zoning Ordinance on a particular parcel of land (e.g., the maintenance of a structure with two residential dwelling units in a zoning district where single family homes are permitted), the defendant who is the owner of a property shall be required to permanently remove the kitchen, bathroom, bedroom, point of entrance/egress or any other offending illegal structure, appliance or fixture. The Borough Construction Official or his designee shall inspect the premises to insure that said removal is accomplished within 30 days of the date of the entry of the judgment of conviction by the Municipal Court.

§350-99. Costs of moving to be borne by violator.

A. Any tenant who receives a notice of eviction pursuant to the provisions of N.J.S.A. 2A:18-61.2 that results from zoning or code enforcement activity for an illegal occupancy shall be considered a displaced person and shall be entitled to relocation assistance in an amount equal to six times the monthly rental paid by the displaced person. The owner-landlord of the structure shall be liable for the payment of relocation assistance pursuant to this section.

B. The Borough of Harrington Park may pay relocation assistance to any displaced person who has not received the required payment from the owner-landlord of the structure at the time of eviction pursuant to Subsection A. All relocation assistance costs incurred by a municipality pursuant to this subsection shall be repaid by the owner-landlord of the structure to the municipality in the same manner as relocation costs are billed and collected under the provisions of N.J.S.A. 20:4-4.1 and N.J.S.A. 20:4-4.2.

§ 350-100. Findings and declarations.

The Mayor and Council hereby find and declare that there has been a proliferation of what are commonly known as "illegal apartments," meaning residential dwelling units which are occupied in violation of zoning laws. These illegal apartments manifest themselves as a second residential unit in a building in a one-family zone. The Mayor and Council hereby further find and declare that such illegal units have a deleterious effect on the quality of life of Borough residents, require the provision of Borough services, generate young people who attend Borough schools, increase the utilization of Borough programs and services, contribute to the costs of the Borough by increasing the generation of refuse (garbage) and sewer flow, contribute to overcrowding, generate traffic within the Borough, generate automobiles which contribute to parking shortages throughout the Borough and lead to the maintenance of dwelling units which often fail to meet health, safety and building code standards. By their nature, such units generally escape taxation as their maintenance and existence is normally hidden and not used for tax assessment purposes. The use and maintenance of said illegal apartments is also unfair to the vast majority of Borough residents who abide by zoning laws.

§ 350-101. Restitution to Borough.

The Borough determines that the harm and detriment to the Borough caused by illegal occupancies to be an unfair and inequitable situation. Difficult to measure hereby determines that the most reasonable way to calculate same as a percentage of the rental payment charged by the owner to the occupant on account of the illegal occupancy. The Borough determines that a percentage of 10% of the rent to be fair and reasonable as a measure of the damage and detriment caused to the Borough, and the Mayor and Council may authorize the Borough Attorney to recover from any person who charges, demands, receives or accepts rent or payment for such an illegal occupancy to make restitution to the Borough for the damage and detriment caused to the Borough during a period of illegal occupancy.